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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

LEGALZOOM.COM, INC., a Delaware corporation, Plaintiff, vs. RICHARD KOMAIKO, an individual, Defendant.	Case No. **COMPLAINT FOR BREACH OF CONTRACT AND INJUNCTIVE RELIEF**

Plaintiff, Legalzoom.com, Inc. ("**Plaintiff**" or "**LegalZoom**"), alleges as follows:

THE PARTIES

1. Plaintiff is a corporation, organized and existing under the laws of the State of Delaware, with its principal places of business in Los Angeles County, California and Travis County, Texas.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendant Richard Komaiko ("**Komaiko**") is, and at all relevant times was, an individual residing and doing business in the State of Illinois.

3. The true names and capacities of the defendants sued herein as DOES 1

through 10, inclusive, are unknown to Plaintiff at this time, who therefore sues said defendants by such fictitious names. Plaintiff will seek leave of Court to amend this Complaint when the true names and capacities of said defendants have been ascertained. Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named defendants is in some manner responsible or liable for the acts and damages alleged herein.

JURISDICTION AND VENUE

4. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1332(a)(1) in that the matter in controversy exceeds the sum of $75,000 and is between citizens of different States.

5. Venue is proper in the Central District of California in that the events on which the claims are based occurred in this District (28 U.S.C. § 1391(a)(2)), and this District was contractually agreed upon by the parties.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

I. The Merger

6. In 2009, Richard Komaiko, among others, founded Amicus Media LLC ("**Amicus**"). Amicus would become an Internet based legal advertising and marketing agency that focused on generating clients for law firms.

7. LegalZoom is the nation's leading provider of personalized, online legal solutions and legal documents for small business owners and families. Among other things, LegalZoom operates an attorney accessibility service on its Internet website, whereby users (“**Potential Clients**”) who seek an attorney can conveniently locate an attorney and, if they choose, can have LegalZoom provide their contact information and the issue for which they seek legal advice to attorneys that have a relationship with LegalZoom.

8. On or about August 7, 2014, LegalZoom, LZ Local, LLC (a wholly owned subsidiary of LegalZoom that facilitated connecting law firms with the Potential Clients, and hereinafter “LZ **Local**”), Amicus, Komaiko (individually and

as a representative of the shareholders of Amicus), Bei Bei Que ("**Que**") and Bryan Harris entered into an Agreement and Plan of Merger (the "**Merger Agreement**"), a true and correct copy of which is attached hereto as Exhibit "A".

9. Among other things, the Merger Agreement provides that:

> **2.22 Full Disclosure**. This Agreement (including the Disclosure Schedule) does not: (a) contain any representation, warranty or information that is false or misleading with respect to any material fact; or, (b) to the Knowledge of the Company, omit to state any material fact necessary in order to make the representations, warranties and information contained and to be contained herein and therein (in the light of the circumstances under which such representations, warranties and information were or will be made or provided) not false or misleading. There is no information or other fact that is or may become materially adverse to the business, condition, assets, capitalization, Intellectual Property, Intellectual Property Rights, liabilities, operations, results of operations, financial performance or prospects of the Company.

(Exh. A, ¶ 2.22, underscore added.)

10. Under the terms of the Merger Agreement, LZ Local was to be merged in to Amicus, which was thereafter to be a wholly owned subsidiary of LegalZoom.

11. Further,

> Concurrently with the execution of this Agreement, and as a condition and inducement to the willingness of Parent to enter into this Agreement, each Key Employee is (i) executing and delivering an offer letter to the Surviving

> Company; and (ii) executing and delivering a Non-Competition and Non-Solicitation Agreement (the "**Non-Compete Agreement**") in favor of the Company and Parent.

(Exh. B, Recital C, underscore added.) Komaiko is identified in the Merger Agreement as a Key Employee.

12. Komaiko did, in fact, execute the required the Non-Compete Agreement, expressly "in favor of, and for the benefit of" LegalZoom, a true and correct copy of which is attached hereto as Exhibit "B".

13. Among other things, the Non-Compete Agreement provides that,

> **2. No Hiring or Solicitation of Employees, Consultants or Independent Contractors; No Interference with Customers, Sponsors, Etc.** The Designated Person [i.e., Komaiko] agrees that, during the Noncompetition Period, the Designated Person shall not, and the Designated Person shall ensure that his Affiliates do not:
>
> …
>
> (b) directly or indirectly, personally or through others, encourage, induce, attempt to induce, solicit or attempt to solicit (on the Designated Person's own behalf or on behalf of any other Person) any Specified Individual[[1]] to leave

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[1] ""**Specified Individual**" shall mean any individual who is or was an employee, consultant or independent contractor of or to [Amicus] on, or during the 60 days prior to, the Effective Date and who accepts employment or another service relationship with Parent or its Affiliates." (Exh. B, ¶ 14(h))

his or her employment, consulting or independent contractor relationship with [LegalZoom] or any of [LegalZoom's] Affiliates[[2]];

(c) directly or indirectly, personally or through others, interfere or attempt to interfere with the relationship of [LegalZoom] or any of [LegalZoom's] Affiliates with any Specified Business Contact[[3]];

. . .

(Exh. B, ¶ 2; underscore added.)

14. The Non-Compete Agreement also provides,

> **4. Specific Performance**. The Designated Person agrees that, in the event of any breach or threatened breach by the Designated Person of any covenant, obligation or other provision set forth in this Noncompetition Agreement: (i) Parent and each of the other Beneficiaries will suffer irreparable harm that cannot adequately be compensated for with monetary damages; and (ii) Parent and each of the other Beneficiaries shall be entitled (in

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[2] "“**Affiliate**” shall mean, with respect to any Person, any other Person that as of the date of this Noncompetition Agreement or as of any subsequent date, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person." (Exh. B., ¶ 14(a).)

[3] "“**Specified Business Contact**” shall mean any Person: (i) who was a customer or supplier of the Business on or prior to the Effective Date; or (ii) that had a sponsorship or other business relationship with the Business on or prior to the Effective Date." (Exh. B, ¶ 14(g).)

> addition to any other remedy that may be available to it, including monetary damages) to seek and obtain: (x) a decree or order of specific performance or mandamus to enforce the observance and performance of such covenant, obligation or other provision; and (y) an injunction restraining such breach or threatened breach. The Designated Person further agrees that no Beneficiary shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 4, and the Designated Person irrevocably waives any right it may have to require any Beneficiary to obtain, furnish or post any such bond or similar instrument.

(Exh. B, ¶ 4.)

15. Finally, the Non-Compete Agreement provides that

> **Attorneys' Fees**. If any legal action or other legal proceeding relating to this Noncompetition Agreement or the enforcement of any provision of this Noncompetition Agreement is brought against any party hereto, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

(Exh. B, ¶ 10.)

II. Post-Merger Discovery By LegalZoom of Komaiko's Misrepresentations

16. Prior to the merger, Komaiko was aware that in assessing a potential transaction with Amicus, LegalZoom was focused on the potential for profitability offered, and the viability of the business model that had been developed, by Amicus.

Komaiko made representations to LegalZoom respecting the future profitability and projected growth of Amicus, even though Komaiko knew (or should have known) that the growth projected was not sustainable because the business model was not viable and that Amicus could not achieve the financial results Komaiko projected.

17. LegalZoom also believed that the past success and expected continued success of Amicus following a merger with a LegalZoom subsidiary was dependant on Amicus' primary human capital – Komaiko and Que. Accordingly, it was only with the assurance that Komaiko and Que, who were at that time living together as a couple, would continue to collaborate and jointly run Amicus post-merger that LegalZoom decided to consummate the transaction.

18. After the merger closed, however, LegalZoom learned that several of Komaiko's representations on which it had relied were false:

A. After receiving financials for July 2014 and thereafter, LegalZoom learned that Komaiko had misrepresented the projected profitability of Amicus, which, as later discovered, was far from being profitable.

B. Komaiko also made misrepresentations concerning the viability of the Amicus business model. Indeed, after the merger, Komaiko admitted to Eddie Hartman ("**Hartman**") and others at LegalZoom that he had always known that the Amicus business model was unworkable.

C. Prior to the Merger, Komaiko concealed his plan to end his romantic relationship with Que, notwithstanding Komaiko's representations that he and Que would continue to work cooperatively to manage Amicus after the merger. Komaiko fully understood that Komaiko's and Que's continued working partnership was a critical component of the merger and was an asset of Amicus in which LegalZoom placed substantial value. Among other things, Komaiko was aware that Que was required to execute an employment agreement with Amicus as a condition of the merger, and that the payments due by LegalZoom under the Merger Agreement were, in part, directly tied to Que and Komaiko continuing to work for

Amicus after the merger. Komaiko nonetheless failed to disclose and concealed from LegalZoom the imminent end to Komaiko's relationship upon the completion of the merger, knowing that such post-merger action would severely and adversely affect the ability of Komaiko and Que to work together.

19. Komaiko's intent to hide or misrepresent these material facts is demonstrated by Komaiko's pushing without justification to close the merger as soon as possible before the end of July 2014, when the next financials would be available. Komaiko knew that LegalZoom would not have consummated the merger had it known the true circumstances of Amicus, and, therefore, Komaiko hid these facts.

20. LegalZoom reasonably relied on Komaiko's representations when it decided to proceed with the merger transaction. Had LegalZoom knew the truth regarding the projected profitability of Amicus, Komaiko's analysis of the Amicus business model, and/or that Komaiko and Que were no longer a couple (and thus unlikely to be able to continue working together in a productive manner), it would not have consummated the merger.

21. As a direct and proximate result of Komaiko's misrepresentations, which also constitute a breach of Section 2.22 of the Merger Agreement, LegalZoom has suffered in excess of $4 million dollars in damages (i.e., compensation paid or remaining due under the Merger Agreement).

22. On October 7, 2015, in accordance with Sections 6.3(a) and 6.5(a) of the Merger Agreement, LegalZoom served Komaiko with the required Notice of Indemnification Claim, advising him that he had committed fraud and breached Section § 2.22 of the Merger Agreement. Pursuant to Section 6.5(b), Komaiko has thirty (30) days from the Service of the Notice of Indemnification Claim to respond. If Komaiko fails to serve his response, or if during the 30 days following service of his response the parties are unable to reach a negotiated resolution, LegalZoom will amend this Complaint to include claims, *inter alia*, for Breach of Contract and Fraud

to seek recovery of all damages incurred plus, as to the fraud claim, punitive damages.

III. Post Merger Conduct Of Komaiko

23. The Merger Agreement provided for the following total payments to the pre-merger shareholders of Amicus, allocated on their pro-rata interest in Amicus:

A. The "**Upfront Consideration**" of $3 million dollars, payable within five business days of the closing of the transaction;

B. The "**Reserve Payment**" of $2 million, payable on July 1, 2018, unless the business was discontinued, in which case the Reserve Payment would be accelerated and become *immediately* due and payable; and

C. Additional "**Earnout Payments**", payable only if Amicus met certain profitability goals.

24. As noted above, however, Komaiko knew that, contrary to his representations to LegalZoom, not only was Amicus not imminently profitable, but that the Amicus business model was unworkable. As a result, Komaiko knew that the Earnout Payments called for under the Merger Agreement would never be triggered. Accordingly, after the Upfront Consideration, Komaiko's financial interest under the Merger Agreement was limited to his share of the Reserve Payment – i.e., approximately $800,000.

25. Knowing that Amicus was never going to be profitable, Komaiko did not want to spend his energies trying to fix an unfixable problem. Accordingly, almost immediately after the close of the Merger Agreement, Komaiko ceased performing his duties as CEO of Amicus. By way of example, and not limitation:

A. Komaiko has had repeated extended absences from Amicus during the over fourteen months since the merger closed.

Among other things, Komaiko took extended vacations and essentially was unavailable for almost all of August and September, 2014, and again in the spring of 2015;

B. Komaiko consistently misrepresented his whereabouts;

C. Komaiko devoted his time and energies to other ventures, including, on information and belief, a marijuana-related business.

26. Komaiko knew, however, that his behavior would give LegalZoom grounds to terminate his employment. This created a $400,000 problem for Komaiko, as if he quit absent “Good Reason” or was terminated for cause in advance of the Reserve Payment date – i.e., July 1, 2018 – the Reserve Payment would drop 50%.

27. Komaiko, therefore, wanted to trigger an immediate payout of the Reserve Payment – which would occur if LegalZoom discontinued the Amicus business – by taking affirmative steps to damage Amicus’ business operations.

28. In connection therewith, on multiple occasions Komaiko approached Que – a “Specified Individual” under the Non-Compete Agreement – and proposed that she help Komaiko “tank” Amicus in the hopes of causing LegalZoom to discontinue the Amicus business, triggering an acceleration of the Reserve Payment. This plan to have Que help him sabotage Amicus comports with his abandonment of his obligations as CEO.

29. Of course, if Komaiko’s plan with Que to sabotage Amicus were successful, it would necessarily:

A. “interfere. . .with the relationship of [LegalZoom and Amicus] with. . .Specified Business Contacts”; and

B. Que would “leave…her employment…with” Amicus.

(Exh. B, ¶ 2.)

FIRST CLAIM FOR RELIEF

(Breach of Contract – Against All Defendants)

30. Plaintiff hereby incorporates by reference and realleges each of the allegations of Paragraph 1 through 29, inclusive.

31. Plaintiff has performed all of the terms, conditions, covenants and promises required to be performed by it in accordance with the terms and conditions of the Agreement, except those which it has been prevented from performing by Defendants.

32. Komaiko has breached both the express terms of the Non-Compete Agreement, as well as the covenant of good faith and fair dealing read in to the Non-Compete Agreement, by way of the conduct alleged above in paragraphs 26 and 27.

33. Accordingly, as a direct and proximate result of Defendants' breaches of the Non-Compete Agreement, Plaintiff has suffered damages in an amount subject to proof at trial and greater than the jurisdictional requirements of this Court.

34. Further, LegalZoom is entitled to specific performance of the Non-Compete Agreement by way of a temporary and permanent injunction barring Defendants from continuing to:

A. directly or indirectly, personally or through others, encouraging, inducing, attempt to induce, soliciting or attempting to solicit (on the Defendants' own behalf or on behalf of any other person) any Specified Individual to leave his or her employment, consulting or independent contractor relationship with LegalZoom or any of its affiliated entities; and

B. directly or indirectly, personally or through others, interfering or attempt to interfere with the relationship of LegalZoom or any of its affiliated entities with any Specified Business Contact.

WHEREFORE, Plaintiff LegalZoom.com, Inc. demands judgment as follows:

As to the First Cause of Action

1. For compensatory damages according to proof at trial;

2. For a temporary and permanent injunction barring Defendants from

A. directly or indirectly, personally or through others, encouraging, inducing, attempt to induce, soliciting or attempting to solicit (on the Defendants' own behalf or on behalf of any other person) any Specified Individual to leave his or her employment, consulting or independent contractor relationship with LegalZoom or any of its affiliated entities; and

B. directly or indirectly, personally or through others, interfering or attempt to interfere with the relationship of LegalZoom or any of its affiliated entities with any Specified Business Contact.

3. For attorneys' fees and costs of suit incurred herein, to the maximum extent allowed by law; and

4. For such further and other relief as the Court deems just and proper.

Dated: October 6, 2015 RESCH POLSTER & BERGER LLP

By: /S/

ANDREW V. JABLON
Attorneys for Plaintiff
LegalZoom.com. Inc.